

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

SANDRA K. BERG,

Plaintiff,

v.

HERSCHBERGER CAFE,

Defendant

CASE NO. :

1 : 10-cv- 0565 LJM -DML

COMPLAINT

Comes now Plaintiff, Sandra K. Berg, by counsel and alleges against Defendant the following:

1. The Plaintiff is Sandra K. Berg, a resident of Marion, IN and employee of the Defendants at all material times to this Complaint.
2. The Defendant is Herschberger Cafe, a company doing business at 100 Fisher Parkway, in Gas City, IN 46933. The Defendant is an "employer" for the purposes of the American with Disabilities Act, 42 U.S.C. § 1211 et seq. ("ADA") and the Age Discrimination and Employment Act of 1967, 29 U.S.C. § 621 et seq. ("ADEA").
3. The Plaintiff filed a Charge of Discrimination, EEOC number 470-2009-02759, on June 1, 2009, and an Amended Charge of Discrimination on September 29, 2009, copies of which are attached hereto, made a part hereof, and incorporated herein as Exhibits "A" and "B". The EEOC issued a Notice of Right to Sue on February 3, 2010, a copy of which is attached hereto as Exhibit "C". All administrative remedies have been exhausted, and all jurisdictional prerequisites have been met for the filing

of this suit.

4. The Plaintiff was hired by the Herschberger Cafe in May 2008, to work as a kitchen helper, and she performed a wide variety of duties as assigned by her managers. At the time of hire, the owners were aware that the Plaintiff suffered from a serious medical condition/disability (arthritis due to several broken bones and titanium fastening her right leg to her right hip). Throughout the Plaintiff's employment, she performed within the reasonable expectations of her employer, and never had any disciplinary actions taken against her.
5. In April 2009, the Plaintiff was informed that the owners had received paperwork from Social Security about benefits that were granted to the Plaintiff in September 2008. Shortly after the cafe's owners received these social security documents, they terminated the Plaintiff.
6. Similarly situated employees under the age of forty (40), and/or who were without any disability/perceived disability/record of impairment, were not terminated, even where their performance was inferior to that of the Plaintiff's. In addition, the Plaintiff was replaced by an individual under the age of forty (40), who had no disability/perceived disability/record of impairment (Plaintiff was over the age of forty (40) at all material times to this Complaint).
7. Plaintiff was given no reason for her termination. She contends that she was terminated on the basis of her disability/perceived disability/records of impairment, and/or because of her age, in violation of her rights under the ADA and/or ADEA.
8. The discriminatory and/or retaliatory conduct of the Defendant was the direct and

proximate cause of the Plaintiff suffering the loss of her job and job related benefits including income, and subjected the Plaintiff to inconvenience, mental anguish, emotional distress, and other damages and injuries.

9. The discriminatory and/or retaliatory conduct of the Defendant was intentional, knowing, wanton, and in reckless disregard of the Plaintiff's federally protected rights under the ADA and/or ADEA. Imposition of punitive damages, where available, and/or liquidated damages, where available, are appropriate.

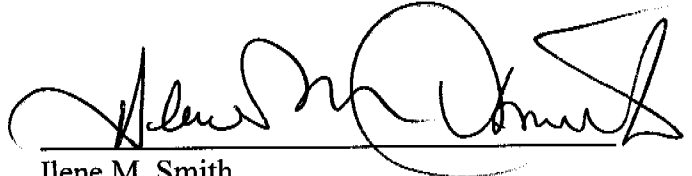
WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendant for compensatory damages, punitive damages (where available), liquidated damages (where available), reasonable attorney's fees and costs, and for all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

A handwritten signature in black ink, appearing to read 'Ilene M. Smith', is written over a horizontal line.

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